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10/041,833	10/19/2001	David Laverne Sprinkle	DEE6270P0160US	5412

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EXAMINER

FISCHMANN, BRYAN R

ART UNIT

PAPER NUMBER

3618

DATE MAILED: 12/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/041,833

Applicant(s)

SPRINKLE

Examiner

Bryan Fischmann

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 2, 2002
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Oct 19, 2001 is/are a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 5 6) ☒ Other: Notice of Irradiated Correspondence

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Specification

1. The disclosure is objected to because of the following:

A) While not strictly objectionable, it is noted that Applicant has underlined reference characters on sheets 6 and 7. Underlines are generally used in Patent Applications to indicate additions. Due to this, the use of quotation marks in lieu of underlines is preferred, though not considered mandatory.

B) On line 11 of sheet 5, it would appear that words are missing. To be specific, the recitation of "...mid-location 68c, 70c connection of the hydraulic cylinders...", is believed to be more clearly worded "mid-location 68c, 70c which is the connection point of the hydraulic cylinders".

C) The following inconsistencies in nomenclature were noted:

1) Line 5 of sheet 5 recites "Hydraulic cylinders...80". Line 20 of sheet 5 recites "cylinders...80". Line 4 of sheet 6 recites "Gaps 80".

2) Line 6 of sheet 6 recites "lateral spaces...86". Lines 11 and 12 of sheet 6 recites "top surface 86".

To avoid confusion to the reader, and to facilitate identifying components by nomenclature in the claims, it is requested Applicant use consistent nomenclature for the same reference number throughout the specification.

D) Line 24 of sheet 5 recites "As illustrated in Figures 4 and 5, the fuel tank 38...".

Reference number 38 does not appear to be shown in Figures 4 or 5.

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2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

Claims 2, 10 and 16 recites "...a fuel tank mounted onto a rearward facing surface of said towers and having an identical outside lateral contour as said towers".

Lines 8-10 of sheet 6 which is believed to provide the best support for the above claim terminology recites only "The wing portions 38b, 38c are tapered or otherwise contoured inwardly at sides thereof to match the inward offset of the towers 68, 70".

Note that there is no mention of the fuel tank being mounted on a "rearward facing surface" of the towers. Additionally, the recitation of "the wing portions...are tapered...inwardly at sides...to match the inward offset of the towers..." is not considered to provide proper antecedent basis for the recitation in the claims of "a fuel tank...having an identical outside lateral contour as said towers", as the term "match" is considered to be a "broader" term than allows some deviation in "contours" between the fuel tank and towers, while the word "identical" does not allow a deviation in contours between the fuel tank and towers.

Drawings

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference signs mentioned in the description: 8a (sheet 4) and 38 (sheets 5 and 6). Correction is required.

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4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference signs not mentioned in the description: 36, 68a and 68c.

Correction is required.

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the fuel tank having an identical lateral outside contour as the towers as recited in claims 2, 10 and 16 and the engine supported on the chassis behind the loader bucket as recited in claims 3, 11 and 17 must be shown or the features canceled from the claims. No new matter should be entered..

After viewing the drawing figures, particularly Figures 4-6, the Examiner sees only from Figure 5 that the fuel tank "wing" portions 38b and 38c are mounted to a rearward facing surface of the towers but not that the fuel tanks have an "identical" lateral contour as the towers. At least this "identical" feature is not obvious from the drawing figures.

6. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

7. The drawings are objected to, as Figures 4 and 5 contain boxes with the letters "A", "B" and "C".

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

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Claim Objections

8. Claim 2, 10, 14 and 16 are objected to because of the following:

A) Claim 2, 10 and 16 recites "a fuel tank...having an identical outside lateral contour as said towers". As already noted in this Office Action, the specification (lines 8-10 of sheet 6) has only disclosed that the fuel tanks "match" the "offset" of the towers. As noted, the term "match" used in the specification is considered to be a broader term than the word "identical" used in the above claims.

B) Claim 14 is objected to as being identical to claim 13.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicants regard as their invention.

Note that the Application is considered to be replete with unclear matter. Therefore, a comprehensive listing of all unclear matter cannot be guaranteed. Applicant is advised to review the claims thoroughly for all unclear matter.

A) Claim 1 recites the limitation "said tower". There is insufficient antecedent basis for this limitation in the claim.

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See also claim 15 for a similar antecedent basis problem.

Note that applicant has only previously recited in claim 1 “a pair of towers”.

B) Claim 1 recites “...a pair of boom arms pivotally connected at base ends thereof to a top of said tower, respectively...”.

This leaves unclear whether Applicant is claiming one, or two boom arms is connected to each tower, due to the plural recitation of “a pair of boom arms” coupled with the singular recitation of “said tower”.

When read in context, the word “respectively” in the above recitation is also considered unclear.

See also claim 15 for a similar unclear recitation.

C) Claims 4, 12 and 18 recite the limitation “said operator”. There is insufficient antecedent basis for this limitation in the claim.

D) Claim 5 recites “...wherein said towers extend from said base ends toward said distal ends...”.

Claim 5 is dependant upon claim 1.

Claim 1 recites “...a pair of boom arms pivotally connected at base ends thereof to tops of said towers...and connected at distal ends...to said loader bucket...”.

It is unclear if Applicant is intending to claim in claim 5 the “boom arms” or the “towers”, since the antecedent basis for the terms “base ends” and “distal ends” applies to the boom arms, not the towers.

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Compare to claim 6 which has similar wording to claim 5, but uses the term "boom arms" in place of the term "towers".

Also see claims 13, 14 and 19 for a similar rejection to claim 5.

E) In claim 20, it is considered unclear whether the recitation of "said distal ends" and "said base ends" applies to the towers in claim 19, or the boom arms in claim 15.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claim 1, as best understood, is rejected under 35 U.S.C. 102(b) as being anticipated by Klee, US Patent 3,828,952.

Klee teaches a utility vehicle comprising:

a chassis (10) supported on wheels (Figure 1);

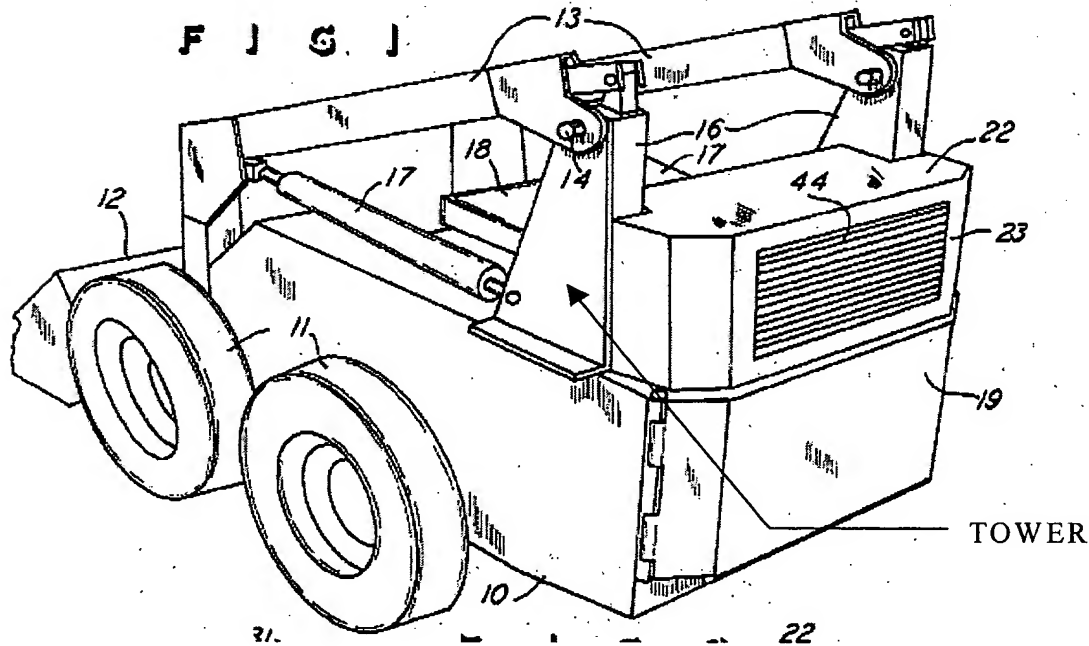
a loader bucket (12);

a pair of towers (see sketch on next page) supported on said chassis and extending substantially vertically (Figure 1), said towers shaped to have outside edges that are further apart

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at a bottom thereof an closer at a top thereof (note base of towers on Figure 1 have outside edges that are further apart); and

a pair of boom arms (13) pivotally connected (14) at base ends thereof to a top of each tower, respectively.



13. Claims 1 and 5, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by German Patent 1248551.

German Patent 1248551 teaches a utility vehicle comprising:

a chassis (4) supported on wheels (Figure 1);

a loader bucket (7);

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a pair of towers (5 and 10 - see comments below) supported on said chassis and extending substantially vertically (Figure 1), said towers shaped to have outside edges that are further apart at a bottom thereof and closer at a top thereof (Figure 1); and

a pair of boom arms (6) pivotally connected (8) at base ends thereof to a top of each tower, respectively.

Regarding the recitation of a pair of towers, which the Examiner says is taught by both reference numbers 5 and 10 of German Patent 1248551, note that Figure 5 shows that each tower is an assembly comprising reference numbers 5 and 10 which are connected by reference numbers 11 and 12.

Regarding claim 5, note "offset" (where 10 ends) substantially midway between a base and distal end of each tower.

14. Claims 1, 6 and 7, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson, et al, US Patent 4,345,870.

Anderson teaches a utility vehicle comprising:

a chassis supported on wheels (Figure 1);

a loader bucket (42);

a pair of towers (comprising 26, 30 and 88) supported on said chassis and extending substantially vertically (Figure 1), said towers shaped to have outside edges that are further apart at a bottom thereof and closer at a top thereof (note that Figures 1, 4 and 5 show outside edges of

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webs 88 at the bottom of the towers are further apart than the top of each tower, which have no webs); and

a pair of boom arms (32) pivotally connected (40) at base ends thereof to a top of each tower, respectively.

Regarding claims 6 and 7, note that Figure 11 shows an offset (taper) substantially at the midway between the base and distal ends of each boom arm. This allows the outer edge of each boom arm to be "offset" toward each other, or stated another way, closer together.

15. Claims 8 and 9, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson, et al, US Patent 4,345,870.

Anderson teaches a utility vehicle comprising:

a chassis supported on wheels (Figure 1);

a loader bucket (42);

a pair of towers (comprising 26, 30 and 88) supported on said chassis and extending substantially vertically (Figure 1);

a pair of boom arms (32) pivotally (40) connected at base ends thereof to tops of said towers, respectively, and connected at distal ends thereof to said loader bucket, said boom arms extending in parallel from said loader bucket rearward (Figure 11) and at a substantially midway position being offset inwardly to said base ends (note that outer edges of 36 on Figure 11 extend inwardly toward base ends due to taper).

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Regarding claim 9, see reference number 88, noting reference number 88 (web) is further “outboard” than rest of tower.

16. Claim 15, as best understood, is rejected under 35 U.S.C. 102(b) as being anticipated by Anderson, et al, US Patent 3,828,952.

Anderson teaches a utility vehicle comprising:

a chassis supported on wheels (Figure 1);

a loader bucket (42);

a pair of towers (comprising 26, 30 and 88) supported on said chassis and extending substantially vertically (Figure 1), said towers shaped to have outside edges that are further apart at a bottom thereof and closer at a top thereof (note that Figures 1, 4 and 5 show outside edges of webs 88 at the bottom of the towers are further apart than the top of each tower, which have no webs); and

a pair of boom arms (13) pivotally connected (14) at base ends thereof to a top of each tower, respectively, and connected at distal ends thereof to said loader bucket, said boom arms closer together at said base ends than at said distal ends (note outer edges of 36 on Figure 11 are closer together at the base ends than the distal ends due to taper of 36).

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Allowable Subject Matter

17. Claims 2-4, 10-14 and 16-20 would be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


- A) Lord - teaches tractor with boom arms that are closer together distal from the bucket
- B) Griffith, et al - teaches tower with is further "outboard" at base
- C) Zanetis - teaches tower that narrows toward the top
- D) Romanchok - teaches boom arms that are closer together distal from the bucket
- E) Hirooka - teaches tower assembly that is "wider" at the bottom
- F) Braud - teaches improved driver visibility in a backhoe
- G) British Patent 1,121,146 - teaches tower that appears to angle "inboard" toward the top
- H) Japanese Patent 57-205633 - teaches tower assembly that is "wider" at the bottom

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19. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Bryan Fischmann whose telephone number is (703) 306-5955. The examiner can normally be reached on Monday through Friday from 7:30 to 4:00.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson, can be reached on (703) 308-0885. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

 12-16-2
BRYAN FISCHMANN
PATENT EXAMINER

Application/Control Number 10/041,833
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Attachment to Paper No. 7

Notice Regarding Treatment of Irradiated Correspondence

The following papers have not been made part of the permanent records of the United States Patent and Trademark Office (Office) for this application (37 CFR 1.52(a)) because of damage from the United States Postal Service irradiation process:

Mailroom Stamp Date

5-2-2

Certificate of Mailing Date

3-5-2

The above-identified papers, however, were not so damaged as to preclude the USPTO from making a legible copy of such papers. Therefore, the Office has made a copy of these papers, substituted them for the originals in the file, and stamped that copy:

COPY OF PAPERS ORIGINALLY FILED

If applicant wants to review the accuracy of the Office's copy of such papers, applicant may either inspect the application (37 CFR 1.14(d)) or may request a copy of the Office's records of such papers (*i.e.*, a copy of the copy made by the Office) from the Office of Public Records for the fee specified in 37 CFR 1.19(b)(4). Please do not call the Technology Center's Customer Service Center to inquiry about the completeness or accuracy of Office's copy of the above-identified papers, as the Technology Center's Customer Service Center will not be able to provide this service.

If applicant does not consider the Office's copy of such papers to be accurate, applicant must provide a copy of the above-identified papers (except for any U.S. or foreign patent documents submitted with the above-identified papers) with a statement that such copy is a complete and accurate copy of the originally submitted documents. If applicant provides such a copy of the above-identified papers and statement within **THREE MONTHS** of the mail date of this Office action, the Office will add the original mailroom date and use the copy provided by applicant as the permanent Office record of the above-identified papers in place of the copy made by the Office. Otherwise, the Office's copy will be used as the permanent Office record of the above-identified papers (*i.e.*, the Office will use the copy of the above-identified papers made by the Office for examination and all other purposes). This three-month period is not extendable.